

Remarks

The instant restriction is troubling for several reasons. First, restriction is improper even where multiple species may be present if a complete search of all claims would impose no undue burden on the examiner. Indeed, “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” MPEP § 803. (Emphasis added.) Here, the examiner has not even alleged that a search of all claims would present any burden, nor has the examiner suggested that a search of all claims would involve an unreasonable number of classes and subclasses.

Second, the examiner’s identified claim grouping does not comport with subject matter of the correspondingly identified claims, which inconsistencies make it difficult for Applicant to respond in any satisfactory manner. Specifically, the examiner identifies the following claim groups and functions:

Group I (Claims 1 -10; 19 - 28): Power control commands where the step size of the power adjustment is varied based on transmit and reference powers;
Group II (Claims 1, 11-17, 19, 29 -34): Power control commands where the adjusting reference is based on frame error reports;
Group III (Claims 1, 18, 19, 35, 36, 43, 44, 47, 48, 51): Power control based on number of error frames since the last report; and
Group IV (Claims 36-42, 44-46, and 48-50): Power control based on a report over an interval and predetermined time period.

The examiner’s comments as given above regarding the particular functions relevant to each claim grouping do not match the claims themselves. For example, none of the independent claims in Groups II, III, and IV are limited to the identified functions.

Indeed, each independent claim in the instant application is directed consistently to subject matter including variable power adjustment step sizes, and adjustment of a common reference power as a function of power measurement reports from a mobile station. Examining any independent claim will require the examiner to search in the same or similar subject matter

as examining any other of the independent claims. This point reinforces the fact that the restriction is improper.

A complete search of all claims presented in the instant application can be made without any undue burden and the examiner is obligated to carry out such examination by the plain language of the MPEP. As such, Applicant traverses the examiner's restriction as unfounded and respectfully requests that it be withdrawn.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.

By:



Michael D. Murphy
Registration No. 44,958

P.O. Box 5
Raleigh, NC 27602
Telephone: (919) 854-1844

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE, ON THE DATE INDICATED, AS FIRST CLASS MAIL, POSTAGE PREPAID, IN AN ENVELOPE ADDRESSED TO: **MAIL STOP NON-FEE AMENDMENT, COMMISSIONER FOR PATENTS P.O. BOX 1450, ALEXANDRIA, VA 22313-1450**

Signature: Deborah Monello

Name: DEBORAH MONDELLO

Date: 3-5-07